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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,769	08/06/2003	Yusuke Fukuda	500.43007X00	6839
24956	7590	11/17/2005	EXAMINER	
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.				ROBBINS, JANET L
1800 DIAGONAL ROAD				ART UNIT
SUITE 370				PAPER NUMBER
ALEXANDRIA, VA 22314				2857

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/634,769	FUKUDA ET AL.
	Examiner Janet Robbins	Art Unit 2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on 24 August 2005.
- 2a)  This action is FINAL.                            2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 1-10 is/are pending in the application.
  - 4a) Of the above claim(s) 3-6 and 10 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1,2 and 7-9 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 06 August 2003 is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 3-6 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 24 August 2005.

***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 1321,1413, 1416,1417, 1502. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is meant by line eight of claim 1, which states, "from a second computer in the first computer." This could be interpreted to mean that the second computer resides inside of the first computer or to mean that the performance information from the second computer is being sent to the first computer. For the purposes of this Office Action, it is interpreted to mean that the performance information from the second computer is being sent to the first computer.

It is also unclear what is meant by line 15 of claim 1, which states, "finding a difference between the performance information in the comparison result." Finding a difference implies that there are two values that will be utilized, however only the comparison result is presented, so there are no two values with which to find a

difference. For the purposes of this Office Action, it is interpreted to mean that the difference is the same as the comparison result, i.e. the comparison is the difference.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 1 and 7-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Aki et al. (US PG Pub 2002/0083169) (hereinafter “Aki”).

With respect to claim 1, Aki teaches a performance information monitoring method using computers ([0002], [0028]), comprising the steps of:

accepting information on a group (network) relating to a first computer in the first computer ([0029]);

storing said accepted group information in a storage in the first computer (network monitoring system: Fig. 3: 19) ([0040], [0042]);

accepting performance information from a second computer (web client) (Fig. 2: 10) in the first computer (network monitoring system) ([0028], [0029], [0039], [0042], [0093]);

comparing performance information of the second computer previously stored in a storage with the performance information received from the second computer in the first computer ([0094], [0095]);

judging whether or not said second computer is included in the information of said group (if an event has occurred from the second computer) when finding a difference between the performance information in the comparison result ([0088], [0106]); and

transmitting an instruction to the computer included in said group information to change a performance information collection interval according to said judgment result ([0030], [0031], [0042]).

With respect to claim 7, Aki teaches a performance monitoring method ([0002], [0028]) using a computer, wherein said computer detects an occurrence of an input or output from a disk (computer hard disk) ([0093]) and transmits an instruction to change a data collection interval according to a detection result of said input/output occurrence ([0030], [0031], [0042]).

With respect to claim 8, Aki teaches the method as set forth in claim 7 wherein, at the time of transmitting the instruction to change said data collection interval, said computer judges whether or not the data collection interval is in a predetermined range between upper and lower values of the data collection interval and transmits an instruction to change said data collection interval according to said judgment result (Fig. 7, 8, 10, 11, 14, 15, 16; [0049]).

With respect to claim 9, Aki teaches the method as set forth in claim 7, wherein transmission of the instruction to change the data collection interval according to the detection result of said input/output occurrence is made to shorten the data collection

interval when an input/output frequency to/from the disk exceeds a prescribed threshold value ([0030], [0052], [0054]).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aki et al.

(US PG Pub 2002/0083169) in view of Peebles et al. (US PG Pub 2003/0204789)

(hereinafter "Peebles"). Aki teaches all the elements of parent claim 1 as shown above, but does not teach explicitly that said performance information includes at least one of a storage capacity, a storage used capacity, and a storage free capacity. Peebles teaches a diagnostic system which gathers performance information on storage capacity (memory utilization) (Peebles: [0015], [0046]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Aki to include gathering information on storage capacity as done by Peebles because storage information will help diagnose the health of the system and therefore give a more accurate picture of the performance of a computer (Peebles: [0014]).

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Christiano (US Patent 5,671,412) discloses a license management system for software applications.

Wiedenman et al. (US Patent 5,581,482) discloses a performance monitor for a digital computer system.

Bauchot et al. (US Patent 6,928,394) discloses a method for dynamically adjusting performance measurements according to provided service level.

Burgess et al. (US Patent 5,796,633) discloses a method and system for performance monitoring in computer networks.

Eidson et al. (US Patent 5,774,377) discloses a method and apparatus for monitoring a subsystem within a distributed system for providing an archive of events within a certain time of a trap condition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Robbins whose telephone number is 571-272-8584. The examiner can normally be reached on weekdays from 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800